

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT NEW HAMPSHIRE**

DIVISION

THE TRAVELERS INDEMNITY COMPANY,

Plaintiff,

v.

**ZURICH AMERICAN INSURANCE
COMPANY,**

Defendant.

Docket No.:

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Now comes The Travelers Indemnity Company (“Travelers”), by and through counsel, and for its Complaint for Declaratory Judgment and Other Relief, states as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment and equitable contribution in which Travelers seeks a declaration that Zurich American Insurance Company (“Zurich”) owes a duty to defend their mutual insured, Jewett Construction Co., LLC (“Jewett”), and owes a duty to reimburse Travelers for Zurich’s share of defense costs that Travelers has incurred, in connection with an underlying claim in connection with a construction project at 2 Chabot Steet, Westbrook, Maine (the “Chabot Claim”).

PARTIES

2. Travelers is an insurance company incorporated in Connecticut with its principal place of business in Connecticut.

3. Upon information and belief, Zurich is an insurance company incorporated in New York with its principal place of business in Illinois.

JURISDICTION AND VENUE

4. An actual justiciable controversy exists between the parties pursuant to the U.S. Constitution and 28 U.S.C. § 2201 as to Zurich's duty to defend Jewett in connection with the Chabot Claim.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Travelers is a citizen of Connecticut, while, upon information and belief, Zurich is a citizen of New York and Illinois, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Zurich resides in this judicial district pursuant to 28 U.S.C. § 1391(c)(2) and insurance policies at issue were issued in this district.

THE INSURANCE POLICIES

7. Travelers issued Policy No. to DT-CO-564N-564N487-IND-21 to Jewett for the period from July 1, 2021 until July 1, 2022 (the "Travelers Policy"). A copy of the Travelers Policy is attached hereto as **Exhibit "A"**.

8. The Travelers Policy contains Form CG T1 00 02 19 which, among other provisions and limitations on coverage, limits Travelers' coverage for damages because of "property damage" that occurs during the policy period of the Travelers Policy. See *Exhibit "A"*.

9. Zurich issued Policy No. GLO7503827 to Jewett for the period from July 1, 2022 until July 1, 2023 (the "Zurich Policy").

10. Upon information and belief, the Zurich Policy provides coverage for damages because of “property damage” that occurs during the policy period of the Zurich Policy.

THE CHABOT CLAIM

11. On September 3, 2021, Jewett entered into a contract with CCRE Chabot, LLC (“CCRE Chabot”) to design and build a commercial fleet center in Westbrook, Maine (the “Project”). A copy of the Standard Design-Build Agreement and General Conditions Between owner and Design-Builder is attached hereto as **Exhibit “B”**.

12. The Project included a 17,700 square foot prefabricated metal building that included a mezzanine storage area.

13. Following the initial concrete pour for the Project’s mezzanine level on June 30, 2022, construction on the building continued.

14. On July 6, 2022, the Project’s geotechnical engineer recommended a pause in certain construction work upon allegedly discovering that the building was experiencing problematic settlement.

15. The Project, including the building and its mezzanine level, was under construction on or after July 1, 2022, the date the Zurich policy incepted.

16. CCRE Chabot alleges that settlement caused damage to the building, including, among other things, cracking to the mezzanine concrete and other parts of the building that were constructed on or after July 1, 2022.

17. Among other damages, CCRE Chabot is seeking to recover from Jewett in the Chabot Claim damages because of alleged property damage that allegedly occurred at the Project on or after July 1, 2022.

18. Among other damages, CCRE Chabot is seeking to recover for damages to the building at the Project, including the building's mezzanine concrete slab.

19. CCRE Chabot, Jewett, and others are engaged in a mediation of the Chabot Claim as required by the CCRE Chabot / Jewett contract.

20. Jewett provided notice of the Chabot Claim to both Travelers and Zurich no later than December 21, 2022.

21. Upon information and belief, Jewett has requested that both Travelers and Zurich defend and indemnify Jewett in connection with the Chabot Claim.

22. Subject to a reservation of rights, Travelers has agreed to defend Jewett in connection with the Chabot Claim and has incurred fees and costs in connection with the defense of Jewett.

23. On January 5, 2023, Zurich denied coverage to Jewett in connection with the Chabot Claim. A copy of Zurich's denial letter is attached hereto as **Exhibit "C"**.

COUNT I – DECLARATORY RELIEF REGARDING THE DUTY TO DEFEND

24. Travelers repeats and realleges the allegations of the preceding paragraphs as if set forth here in their entirety.

25. In the Chabot Claim, CCRE Chabot is seeking to recover from Jewett for damages because of property damage that took place during the policy period of the Zurich Policy.

26. Zurich owes a duty to defend Jewett in connection with the Chabot Claim.

COUNT II – EQUITABLE CONTRIBUTION REGARDING DEFENSE FEES & COSTS

27. Travelers repeats and realleges the allegations of the preceding paragraphs as if set forth here in their entirety.

28. To the extent that Travelers owes a duty to defend Jewett in connection with the Chabot Claim, Zurich also owes a duty to defend Jewett in connection with the Chabot Claim.

29. To the extent that Travelers owes a duty to defend Jewett in connection with the Chabot Claim, Travelers has paid greater than its share of Jewett's defense costs in connection with the Chabot Claim.

30. To the extent that Travelers owes a duty to defend Jewett in connection with the Chabot Claim, Travelers is entitled to reimbursement from Zurich for Zurich's share of defense fees and costs incurred in the defense of Jewett in connection with the Chabot Claim.

PRAYER FOR RELIEF

Wherefore, Travelers respectfully requests that the Court enter judgment as follows:

- a. Finding and declaring that Zurich owes a duty to defend Jewett in connection with the Chabot Claim;
- b. Awarding Travelers an amount equal to Zurich's share of defense fees and costs incurred in the defense of Jewett in connection with the Chabot Claim at the appropriate time; and
- c. Awarding such other and further relief to Travelers as the Court deems just and proper.

Dated: June 28, 2023

Respectfully submitted,

THE TRAVELERS INDEMNITY COMPANY,

By: /s/ Justin M. Fabella

One of its attorneys

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